

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**IA(IB) No. 769/KB/2020  
In  
CP(IB) No. 1778/KB/2019**

**Coram: Shri M.B. Gosavi, Hon'ble Member (Judicial) &  
Shri Harish Chander Suri, Hon'ble Member (Technical)**

<b>Name of the Company</b>	<b>Section</b>
<b>Aanchal Iron &amp; Steel Pvt. Ltd. Vs. Shyam Sel &amp; Power Ltd.</b>	<b>9</b>

**ORDER**

The above referred case was heard through Video Conferencing on 24.09.2020 and this Tribunal delivered its judgment vide Order dated 30.09.2020.

It is brought to our notice that an error occurred in the names of the Counsel who appeared through video conference. It is an error, that needs to be corrected. Accordingly, we are correcting the names of the Counsel as under:-

**1. Ms. Manju Bhuteria, Advocate ]**  
**2. Ms. Urmila Chakraborty, Advocate ] For the Operational Creditor**  
**3. Ms. Aindrila Basu, Advocate ]**

**1. Mr. Abhrajit Mitra, Sr. Advocate ]**  
**2. Mr. Nirmalya Dasgupta, Advocate ] For the Corporate Debtor**  
**3. Ms. Debjani Chatterjee, Advocate ]**

The above rectification of the order has been made in terms of the power conferred upon the Tribunal under Rule 154 of the NCLT Rules, 2016 and the corrected order is to be uploaded forthwith.

**(Harish Chander Suri)**  
**Member (T)**

**(M.B. Gosavi)**  
**Member (J)**

*Dated 1<sup>st</sup> October, 2020*

VC

**In The National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**IA(IB) No. 769/KB/2020  
In  
C.P. (IB) No. 1778/KB/2019**

**In the matter of :**

**Sections 8 and 9 and other applicable provisions of the Insolvency and Bankruptcy Code 2016 as amended read with Rule 6 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules 2016.**

**And**

**In the matter of:**

**Rule 11 of the National Company Law Tribunal Rules, 2016**

**And**

**In the matter of :**

**M/S. AANCHAL IRON & STEELS PRIVATE LIMITED,** a Company within the meaning of the Companies Act, 2013 and having its registered office at 23A, N.S. Road, 7<sup>th</sup> Floor, Kolkata 700001 within the jurisdiction as aforesaid.

**..... Operational Creditor/Applicant**

**And**

**In the matter of :**

**M/S. SHYAM SEL AND POWER LIMITED,** a company within the meaning of the Companies Act, 2013, having its registered office at 5, C.R. Avenue, Princep Street, Kolkata 700072 within the jurisdiction as aforesaid.

.... Corporate Debtor/Respondent

Order reserved on: 24/09/2020

Judgement / Order delivered on : 30 /09/2020

Order Amended on : 01/10/2020

Coram: Shri M.B. Gosavi, Hon'ble Member (Judicial) &  
Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

- |                                     |   |                              |
|-------------------------------------|---|------------------------------|
| 1. Ms. Manju Bhuteria, Advocate     | ] |                              |
| 2. Ms. Urmila Chakraborty, Advocate | ] | For the Operational Creditor |
| 3. Ms. Aindrila Basu, Advocate      | ] |                              |
|                                     |   |                              |
| 1. Mr. Abhrajit Mitra, Sr. Advocate | ] |                              |
| 2. Mr. Nirmalya Dasgupta, Advocate  | ] | For the Corporate Debtor     |
| 3. Ms. Debjani Chatterjee, Advocate | ] |                              |

#### AMENDED ORDER

Per Harish Chander Suri, Member (T)

1. The Operational Creditor **M/s. Aanchal Iron and Steels Private Limited** has filed this application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) read with Rule 6 of the National Company Law Tribunal Rules 2016, against the Corporate Debtor, **M/s. Shyam Sel and Power Limited** for not making the payment of Rs. 1,70,82,059.04 (Rupees One Crore Seventy Lakh Eighty Two Thousand Fifty Nine and Paise Four Only) which has allegedly become

due and payable by the Corporate Debtor from February 12, 2019. Pending the application, the Operational Creditor has filed an Interim application being I.A. (IB) No. 769/KB/2020 for an early hearing. This I.A. and C.P. were fixed for hearing on 24.09.2020 through Video conferencing since the work of the Tribunal was disrupted due to Covid-19 pandemic and consequential lockdown in West Bengal.

2. The parties have already completed their pleadings and have been heard through their respective Counsel and we will proceed to deliver our orders as under:-
  
3. The Operational Creditor has submitted in the petition and arguments on its behalf that the Corporate Debtor had purchased goods from the Operational Creditor from time to time in various quantities which was duly delivered at its units situated at Burdwan and Jamuria. There was no objection, demur and/or protest as regards quantity or quality or price of the goods. It is submitted by the Operational Creditor that the Corporate Debtor made irregular part payments to the Operational Creditor from time to time and out of the total tax invoices of Rs.7,68,13,254.04 (Rupees Seven Crore Sixty Eight Lakh Thirteen Thousand Two Hundred Fifty Four and Paise Four Only), a total sum of Rs.5,97,31,195/- (Rupees Five Crore Ninety Seven Lakh Thirty One Thousand One Hundred Ninety Five Only) was paid by the Corporate Debtor. According to the Operational Creditor, a sum of Rs.1,70,82,059.04 is still due and payable on account of the tax

invoices issued by the Operational Creditor for which repeated reminders and requests have been sent to the Corporate Debtor but, the Corporate Debtor has neglected to make the payment of the admitted and acknowledged amount to the Operational Creditor.

4. The Operational Creditor has submitted that they are further entitled to receive interest on the unpaid tax invoice amount at the rate of 18% per annum from the date of defaults i.e. February 12, 2019 till realization of the debt. In support of its claim, the Operational Creditor has annexed all the tax invoices relating to the claim, a copy of the ledger account of the Corporate Debtor in the books of account of the Operational Creditor from 5<sup>th</sup> of August, 2017 till 11.02.2019 to indicate that no amount has been received from the Corporate Debtor after 11<sup>th</sup> February, 2019 and also to reflect that a sum of Rs.1,70,82,059.04 is the closing balance due from the Corporate Debtor to the Operational Creditor. A demand notice dated 27<sup>th</sup> June, 2019 was sent through speed post to the Corporate Debtor mentioning therein the brief facts relating to their transactions and demanding the total value of the products supplied by the Operational Creditor to the Corporate Debtor which was lying unpaid till then i.e. Rs.1,70,82,059.04 along with interest. The said notice was duly delivered and the Corporate Debtor replied to the said notice through its advocate.
5. The reply of the Corporate Debtor to the notice issued by the

Operational Creditor mainly raised the issue that the supplies received from the Operational Creditor during the month of October 2017 and November 2017 were not as per the desired specifications and when the matter was brought to the notice of the Operational Creditor, the Operational Creditor allegedly expressed their inability to take back such supplies as they would become completely redundant, useless and lose all its commercial value and be sold for scrap. It is stated in the reply that the Corporate Debtor was requested to consume and appropriate such rejected products and agreed to make adequate deduction in the invoiced value towards these rejected products. It is further stated in the reply that the Operational Creditor agreed to reduction of Rs.1,54,00,000/- (Rupees One Crore Fifty Four Lakh Only), and that only a sum of Rs.57,491/- (Rupees Fifty Seven Thousand Four Hundred Ninety One only) is due and would be paid if the Operational Creditor was ready to receive the same. The Corporate Debtor denied all other averments of the notice and required the Operational Creditor to withdraw the notice.

6. The Operational Creditor once again sent rejoinder to the reply dated 19<sup>th</sup> September, 2019, received from the Corporate Debtor and stated that the reply is replete with false, malicious and baseless allegations. The Corporate Debtor was informed that no documents have been disclosed or produced with the reply dated 9<sup>th</sup> July, 2019 and that the Corporate Debtor had failed to deny the allegations of the operational debt due to the Operational Creditor. The statements

and contents of the reply are merely an after- thought, which has been designed to evade the legitimate claims of the Operational Creditor in the demand notice. The Operational creditor denied the various allegations made in the reply and once again called upon the Corporate Debtor to make the payment of the unpaid and outstanding operational debt in default, to the tune of Rs.1,70,82,059.04 together with interest @18% p.a. thereon from August 5, 2017.

7. Now the question that calls for consideration and taking a decision on by this Adjudicating Authority is as to whether any operational debt is due to the Operational Creditor from the Corporate Debtor or not? On the one hand the Operational Creditor has proved on record by way of various tax invoices, ledger account etc. that the full payment of the goods supplied to the Corporate Debtor has not been made to the Operational Creditor, whereas the Corporate Debtor for the first time in its reply to the notice under Section 8 of the IBC has denied the claim of the Operational Creditor on the ground that some debit note had been issued by the Corporate Debtor to the Operational Creditor after the Operational Creditor consented to the same in lieu of the defective supply to the Corporate Debtor which according to the Operational Creditor is false and an after-thought, being stated only to frustrate and evade the claim of the Operational Creditor.
8. We have gone through the application of the Operational Creditor, reply affidavit along with annexures filed by the Corporate Debtor and

the rejoinder filed by the Operational Creditor and also sur-rejoinder filed by the Corporate Debtor.

9. In the reply affidavit the Corporate Debtor denied that the goods were received from the Operational Creditor without any objection or demur with regard to quantity and quality of the goods. It is stated that the Corporate Debtor had raised its complaint with regard to quality of the goods and requested the Operational Creditor to take back such goods as the same could not be used for the specified work. It is stated that the Corporate Debtor had also raised a debit note under the cover of its letter dated 17<sup>th</sup> January, 2018 which was duly received by the Operational Creditor. The CD further stated to have also made payment of Rs.16,24,568/- as reflected in the bank statement enclosed to the affidavit. Credit for that amount has however not been given by the Operational Creditor. It is submitted that the disputes with regard to quality of goods was raised way back in 2017 and prior to issuance of the statutory notice can be considered as pre-existing dispute and the application cannot be entertained and should be dismissed.

10. The Operational Creditor, however, denied in the rejoinder that the calculation of the amount made by the Operational Creditor is incorrect as alleged or at all. It was denied that a sum of Rs.16,24,568/- was paid by the Corporate Debtor on 12<sup>th</sup> September, 2017 as alleged at all. It is submitted by the Operational Creditor that

it has only one bank account i.e. with Karur Vyasa Bank and the Annexure B i.e. a statement issued by the Bank would show that no sum of Rs.16,24,568/- was deposited in the said account of the operation creditor. It is submitted that the Corporate Debtor has with ulterior motive and mala fide intention alleged that the said sum has been paid to the Operational Creditor. In fact the Operational Creditor has several group companies and those group companies also have transactions with the Corporate Debtor. One of the said group company is Aanchal Ispat Limited (now in CIRP) and the aforesaid cheque of Rs.16,24,568/- was issued by the Corporate Debtor in favour of Aanchal Ispat Limited as would be evident from the bank statement certified by Karur Vysya Bank, Burrabazar Branch. It is further submitted that the cheque number mentioned in Annexure 'A' of the reply affidavit by the Corporate Debtor is the same cheque number which was mentioned in the bank account of Aanchal Ispat limited (now in CIRP) in whose favour the said cheque was issued. The Corporate Debtor has made a false statement which according to the Operational Creditor, is liable for forgery.

11. The Operational Creditor denied that there was any quality testing of the goods supplied done or agreed to be done as alleged or there was any agreement for testing the product as alleged. According to the Operational Creditor the story of testing is an after-thought. The Operational Creditor has denied all the allegations made in the reply by the Corporate Debtor. The Operational Creditor has further denied

and stated that the receipt of the letter dated 13<sup>th</sup> November, 2017 is forged and seal is not of the Operational Creditor and also the initial appearing on the said seal is not of any employee or person concerned of the Operational Creditor. The said letter dated 13<sup>th</sup> November, 2017 was never received by the Company and the receipt is not of the Operational Creditor. It is stated that at no point of time the Corporate Debtor complained about the goods or asked the Operational Creditor to take back the supplies. The Operational Creditor further denied that there was any suppression of facts by the Operational Creditor at all. It was further denied that there was any pre-existing dispute.

12. In the sur-rejoinder filed by the Corporate Debtor, we find that the cheque of Rs.16,24,568/- (Rupees Sixteen Lakh Twenty Four Thousand Five Hundred Sixty Eight Only) was issued to Aanchal Ispat Limited and that it was not received by the Operational Creditor. The Corporate Debtor has filed a Certificate dated 13<sup>th</sup> July, 2020 issued by the HDFC Bank certifying the issue of the said cheque by the Corporate Debtor and the same is marked with the letter 'A'.

13. While carefully going through the said certificate annexed with the sur-rejoinder filed by the Corporate Debtor it would be seen that the said cheque No. 014545 for Rs.16,24,568/- issued from Cash credit account no. 00140120000257 by Shyam Sel & Power Limited was stated to have been issued in favour of **Aanchal Iron and Steel**

**Private Limited** and was cleared on 12.09.2017. It is also stated in that very certificate that the certificate was issued at the specific request of M/s. Shyam Sel & Power Limited without attaching any risk and responsibility on Bank or any signing officer in any respect whatsoever, more particularly either as guarantor or otherwise.

14. Another letter annexed with the sur-rejoinder is issued by the Chartered Accountant M/s. S K Agrawal and Co to the Board of Directors of Shyam Sel and Power Limited i.e. the Corporate Debtor that “We, M/s. S K Agrawal and Company, statutory auditor of M/s. Shyam Metallics and Energy Limited, have been asked by the subsidiary company Shyam Sel and power Limited to certify the outstanding amount to Aanchal Iron & Steels Private Limited for the litigation in NCLT CP IB no. 1778/KB/2019 Aanchal Iron & Steel Pvt. Ltd. vs. Shyam SEL and Power Ltd. We hereby certify that as per information and explanation given to us and documents produced before us, certify that the aggregate trade payables of Rs.447.11 crores as per the audited Consolidated Financial Statements for the year ended 31<sup>st</sup> March, 2018 includes a sum of Rs.4.33 crores payable to Aanchal Iron & Steels Private Limited as at 31.03.2018.” According to the Operational Creditor, it is a clear-cut admission of its liability towards the Operational Creditor on the part of the CD.

15. We have heard the Ld. Counsel for the parties and we are satisfied that the operational creditor has been able to establish that there was

outstanding Operational debt which has not been paid by the Corporate Debtor in spite of notice of demand having been served. From the reply documents etc., filed by the Corporate Debtor, no valid or reliable proof or evidence was produced by the Corporate Debtor which could indicate that there was any pre-existing dispute. The Corporate Debtor has not been able to prove that the Operational Creditor had ever agreed to the issuance of any debit note by the Corporate Debtor which could have set off the amount due as being claimed by the Corporate Debtor on account of debit note or defective goods. In the absence of any such valid proof of the debit note having been created by the CD or accepted by the Operational Creditor, the amount of Rs.1,70,82,059.04 with agreed interest remained outstanding which the Corporate Debtor has failed to clear, and defaulted in spite of Demand Notice.

16. During the course of arguments, the Operational Creditor has taken us through the petition and all annexures, the rejoinder etc., and has proved that total supplies to the tune of Rs.7,68,13,254.04 were made to the Corporate Debtor against tax paid invoices from August, 2017 to November, 2017. It has further been proved by the Operational Creditor that a sum of Rs.5,97,31,195/- has been received from the Corporate Debtor but, for the remaining amount of Rs.1,70,82,059.04 the Corporate Debtor defaulted in making payment. The demand notice dated 27<sup>th</sup> June, 2019 under Section 8 of the IBC has admittedly been received by the Corporate Debtor and a reply thereto was also

sent on July 9, 2019. The Operational Creditor further issued a reply on 19<sup>th</sup> September, 2019. The Operational Creditor has submitted that the Operational Creditor had paid GST in respect of the total supplies and filed GST returns with respect to the same. The Corporate Debtor has also availed the tax benefit as input tax credit and there is no mismatch. No input tax credit was reversed by the Corporate Debtor. Ld. Counsel for the Operational Creditor further argued that the Corporate Debtor has admitted its liability as the holding Company of the Corporate Debtor viz., Shyam Metalics and Energy Limited has filed a consolidated Balance Sheet and annexed thereto is a consolidated list of Sundry Creditors as on 31<sup>st</sup> March, 2018, whereby the holding Company to the Corporate Debtor has admitted that Rs. 4.33 crore is payable to the Operational Creditor as on 31<sup>st</sup> March, 2018. The Ld. Counsel for the Corporate Debtor however submitted that part of the goods supplied by the Operational Creditor were defective.

17. It is however submitted by the CD that the Operational Creditor was informed about the defective goods and the Corporate Debtor raised its complaint with regard to the quality of the goods as the goods could not be used for the specified work. It is argued that the Corporate Debtor had already raised such complaint by virtue of its letter dated November 13, 2017 as the Corporate Debtor has also raised a debit note submitted under cover of its letter dated January 17, 2018. The Corporate Debtor has also submitted that a sum of

Rs.16,24,568/- reflected in the bank statement was paid to the Operational Creditor for which credit has not been given by the Operational Creditor. In reply to the arguments of the Corporate Debtor the Operational Creditor submitted that the Corporate Debtor has never raised any objection regarding the quality or quantity and that the letter dated 13<sup>th</sup> November, 2017 or January 17, 2018 or debit note dated 17<sup>th</sup> January, 2018 have never been received by the Operational Creditor. It is stated that the receipts on the said letter are forged and seal is not of the Operational Creditor nor are the initials appearing on the said stamps are of any employee or person concerned with the Operational Creditor.

18. It is stated that no goods have been returned by the Corporate Debtor and the allegations are false and incorrect. Since no complaint was ever made, as such the question of the Operational Creditor requesting the Corporate Debtor to consume the rejected product or agreeing to make deduction is untrue and incorrect. The Operational Creditor never agreed to any deduction of Rs.1,54,00,000/- (Rupees One crore Fifty Four Thousand Only) as alleged. The letter dated 13<sup>th</sup> November, 2017 or letter dated 17<sup>th</sup> January, 2018 or debit note dated 17<sup>th</sup> January, 2018 were never received by the Operational Creditor. The whole controversy revolves on two issues – (1) whether the parties had agreed to accept or issue any debit note (2) whether the amount of Rs.16,24,568/- (Rupees Sixteen Lakh Twenty Four

Thousand Five Hundred Sixty Eight Only) was paid by the Corporate Debtor to the Operational Creditor, for the both the parties have different versions.

19. The Corporate Debtor has allegedly enclosed letter dated 13<sup>th</sup> November, 2017 addressed to the Operational Creditor which allegedly have been received by the Operational Creditor on 14.11.2017, the contents of the letter are as under:-

*“This is with reference to the supply of MS Scrap during the period from August 17, October 17 and November 2017. As per our telephonic conversation we had, please note that the goods supplied during the month of October’17 and November’17 did not match the specifications.*

*However, even after several intimation over phone, we are yet to receive any response from your side. Hence, we will be bound to send back the goods supplied during the month of October’17 and November’17 amounting to Rs.5,18,25,895/- to your factory as such goods does not match the quality specifications”.*

20. Another letter dated 17<sup>th</sup> January, 2018 was again addressed to the Operational Creditor, which is alleged to have been received by the Operational Creditor on 18<sup>th</sup> January, 2018. The Operational

Creditor, however, has denied having received either of the two letters and has submitted that the seal and initials were forged. Though in the letter dated 13<sup>th</sup> November, 2017 the Corporate Debtor had allegedly mentioned in para 1 “that the goods supplied during the month of October’17 & November’17 did not match the specifications”, it is however, not clear as to what type of specifications had been agreed to between the parties. It is also not clear whether part of the consignment was inferior or the whole consignment was inferior, no details have been mentioned in the said letter. In para 2 of the letter the Corporate Debtor has written that even after several intimations over phone they are yet to receive response from the Operational Creditor and hence they would be bound to send back the goods supplied during the month of October 2017 & November 2017 amounting to Rs.5,18,25,895/- (Rupees Five Crore Eighteen Lakh Twenty Five Thousand Eight Hundred Ninety Five Only) to the factory of the Operational Creditor as the goods did not match the quality and specifications. To support its points, another letter dated 17<sup>th</sup> January, 2017 has allegedly been written to the Operational Creditor i.e. after 2 months, the contents whereof are reproduced as under:-

*“This is with reference to our letter dated 13 November 2017 and subsequent meetings and discussion we had with your officials representatives. During the discussions held you had agreed that*

*goods supplied by you during the month of October 2017 and November 2017 were not as per the desired specifications.*

*During discussion it was also expressed by you that return of these goods will be a huge losses for you as these goods may not fetch desired market prices. Considering the relationship between us over the years, we agreed to utilize the rejected goods in the factory after suitable deduction.*

*We mutually agreed for a deduction of Rs.1,54,00,000/- from total supply value of Rs.5,18,25,895/- made during the month of October 17 and November 17.”*

21. It is written by the Corporate Debtor to the Operational Creditor that subsequent meetings and discussions had taken place between the Corporate Debtor and the Official representatives of the Operational Creditor and that it had been agreed that the goods supplied by the Operational Creditor were not as per the desired specifications. It is further written in the letter that during discussions it had been expressed by the Operational Creditor that the return of the goods would be a huge loss for the Operational Creditor as these goods might not fetch desired market price. Considering the relationship between the parties over the years the Corporate Debtor had agreed to utilize the rejected goods in the Factory after suitable deductions and that a deduction of Rs.1,54,00,000/- from total supplied value was mutually agreed. It is surprising that several

subsequent meetings were allegedly held between the Corporate Debtor and the Official representatives of the Operational Creditor and it is stated to have been agreed too between the parties in those meetings and discussions but, no minutes of the meetings have been recorded or signed by the parties. If there had been any such meetings between the parties, the first thing that could have been done by both the Companies through their official representatives who attended the meetings, would be to get a note or minutes recorded, duly signed by both the parties where such a huge amount of Rs.1.54 crores was to be waived off by one party in favour of the other party and a debit note of the said amount was to be accepted. The debit note could have been made and signed there and then. The question of issuing debit note by the Corporate Debtor and accepting debit note by the Operational Creditor is un-believable in the facts of the present case, and this A/A cannot turn a blind eye to these inactions on the part of the Corporate Debtor, which would have been the natural conduct of any prudent person much less than a qualified Company Secretary or Directors or other officers in authority or managing the day to day affairs of the Corporate debtor, and cannot blindly believe these two letters which are otherwise disputed by the operational creditor as forged ones, against all other circumstances which go in favour of the operational creditor.

22. The next question about payment of Rs. 16,24,568/- which was

allegedly paid by the Corporate Debtor to the Operational Creditor on 12<sup>th</sup> September, 2017. The Operational Creditor however has denied and stated that the said amount was never deposited in its sole account and in fact the cheque had been issued by the Corporate Debtor to Aanchal Ispat Limited (now in CIRP) which is a group company of the Operational Creditor. Both these Companies are separate corporate entities and their dealings cannot be allowed to be mixed up by the Corporate Debtor whatever relation between these two companies may be. Even though the reply to the notice was sent by the Corporate Debtor to the Operational Creditor on 9<sup>th</sup> July, 2019, there is no reference to the letter dated 17<sup>th</sup> January, 2018 allegedly written by the Corporate Debtor to the Operational Creditor which is the most important document according to the Corporate Debtor. The Corporate Debtor could not be so careless as not to mention the contents of the said letter in its reply to the notice received from the Operational Creditor.

23. Various judgments of the Hon'ble Supreme Court and those of Hon'ble Appellate Tribunal though gave importance to the existence of a dispute for rejecting an application under Section 9 but, has also held that the Adjudicating Authority has to see whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence, it is important to separate the grain from the chaff and to

reject a spurious defence which is mere bluster. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application. But the facts in the present case are otherwise. The main points which weighed in our mind are that goods have not been returned and admittedly consumed by the Corporate Debtor. There are no minutes in spite of meetings having taken place between the representatives of the Operational Creditor and the Corporate Debtor, the two letters dated 13<sup>th</sup> November, 2017 and 17<sup>th</sup> January, 2018 have been unilaterally drafted and allegedly sent to the Corporate Debtor later on with no specific receipt by any responsible officer of the Operational Creditor. What was the method of calculation adopted by the parties in reaching the amount of debit note is not clear. The Corporate Debtor has availed tax benefit as per input tax credit and no input tax credit was reversed by the Corporate Debtor.

If there had been any such agreement even though an oral one for issuance or acceptance of a debit note to the tune of Rs.1.54 crores, the Corporate Debtor would have immediately reversed the input tax credit. If there had been meetings or discussions for about two months there must have been some exchange of e-mails in the present age when people do not rely on telephonic conversation only. None of the e-mail record exchanged between the parties has been placed on record by the Corporate Debtor. In the absence of any such record or evidence in support, the CD has attempted to base its version only on telephonic discussions and the

aforesaid two letters which are otherwise being disputed as forged ones.

We have also gone through the written notes with copies of the judgments relied upon by the parties.

24. In view of the aforesaid discussions, we see no truth in the story of issuing debit note by the Corporate Debtor or acceptance thereof by the Operational Creditor. The version of the Operational Creditor that neither of the two letters were received by the Operational Creditor and the seal and initials also do not belong to the Operational Creditor in any manner appears to be probable one. With the aforesaid discussions, we are of the considered view that the Operational debt of Rs.1,70,82,059.04 is due and outstanding to be payable by the Corporate Debtor to the Operational Creditor. The Corporate Debtor has failed to clear its outstanding and defaulted in making the payment in spite of notice under Section 8 of the IBC. The sum of Rs.1,70,82,059.04 is payable along with interest to the Operational Creditor. We, therefore, have no hesitation in admitting the petition and ordering initiation of CIRP against the Corporate Debtor with the following orders:-

## **ORDERS**

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. Shyam Sel and Power Limited** is hereby **admitted**.
- ii) We hereby declare and order a moratorium, and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
  - i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- v) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- vi) The services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vii) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- viii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- ix) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- x) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- xii) **Mr. Seikh Abdul Salam, IBBI Regn. No.IBBI/IPA-003/IP-N00250/2019-2020/12966, Phone no.7318868526 and email id salam10695@gmail.com,** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xiii) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xiv) The Operational Creditor/Applicant is directed to deposit Rs.1,00,000/- (Rupees one lakh only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional within one week of the date of this order.
- xv) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through email.
- xvi) List the matter on 10.11.2020 for the filing of the progress report.

xvi) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (T)**

**(M.B. Gosavi)**  
**Member (J)**

Order dated on 1<sup>st</sup> October 2020.

VC

**In The National Company Law Tribunal  
Kolkata Bench  
Kolkata**

**IA(IB) No. 769/KB/2020  
In  
C.P. (IB) No. 1778/KB/2019**

**In the matter of :**

**Sections 8 and 9 and other applicable provisions of the Insolvency and Bankruptcy Code 2016 as amended read with Rule 6 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules 2016.**

**And**

**In the matter of:**

**Rule 11 of the National Company Law Tribunal Rules, 2016**

**And**

**In the matter of :**

**M/S. AANCHAL IRON & STEELS PRIVATE LIMITED, a Company within the meaning of the Companies Act, 2013 and having its registered office at 23A, N.S. Road, 7<sup>th</sup> Floor, Kolkata 700001 within the jurisdiction as aforesaid.**

**..... Operational Creditor/Applicant**

**And**

**In the matter of :**

**M/S. SHYAM SEL AND POWER LIMITED, a company within the meaning of the Companies Act, 2013, having its registered office at 5, C.R. Avenue, Princep Street, Kolkata 700072 within the jurisdiction as aforesaid.**

**.... Corporate Debtor/Respondent**

**Order reserved on: 24/09/2020**

**Judgement / Order delivered on : 30/09/2020**

**Coram: Shri M.B. Gosavi, Hon'ble Member (Judicial) &  
Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Counsel on Record :**

- |                                    |   |                        |
|------------------------------------|---|------------------------|
| 1. Mr. Kuldip Mullick, Advocate    | ] |                        |
| 2. Mr. Shashi Agarwal, Liquidator  | ] | For the applicant      |
| 3. Mr. Aayush Lakhotia, Advocate   | ] |                        |
| 1. Mr. Moti Sagar Tiwari, Advocate | ] | For suspended Board of |
| 2. Mr. Sailendra Tiwari, Advocate  | ] | Directors              |

**O R D E R**

**Per Harish Chander Suri, Member (T)**

1. The Operational Creditor **M/s. Aanchal Iron and Steels Private Limited** has filed this application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) read with Rule 11 of the National Company Law Tribunal Rules 2016, against the Corporate Debtor, **M/s. Shyam Sel and Power Limited** for not making the payment of Rs. 1,70,82,059.04 (Rupees One Crore Seventy Lakh Eighty Two Thousand Fifty Nine and Paise Four Only) which has allegedly become due and payable by the Corporate Debtor from February 12, 2019. Pending the application, the Operational Creditor has filed an Interim application being I.A. (IB) No. 769/KB/2020 for an early hearing. This I.A. and C.P. were fixed for hearing on 24.09.2020 through Video conferencing since the work of the Tribunal was

disrupted due to Covid-19 pandemic and consequential lockdown in West Bengal.

2. The parties have already completed their pleadings and have been heard through their respective Counsel and we will proceed to deliver our orders as under: -
  
3. The Operational Creditor has submitted in the petition and arguments on its behalf that the Corporate Debtor had purchased goods from the Operational Creditor from time to time in various quantities which was duly delivered at its units situated at Burdwan and Jamuria. There was no objection, demur and/or protest as regards quantity or quality or price of the goods. It is submitted by the Operational Creditor that the Corporate Debtor made irregular part payments to the Operational Creditor from time to time and out of the total tax invoices of Rs.7,68,13,254.04 (Rupees Seven Crore Sixty Eight Lakh Thirteen Thousand Two Hundred Fifty Four and Paise Four Only), a total sum of Rs.5,97,31,195/- (Rupees Five Crore Ninety Seven Lakh Thirty One Thousand One Hundred Ninety Five Only) was paid by the Corporate Debtor. According to the Operational Creditor, a sum of Rs.1,70,82,059.04 is still due and payable on account of the tax invoices issued by the Operational Creditor for which repeated reminders and requests have been sent to the Corporate Debtor but, the Corporate Debtor has neglected to make the payment of the admitted and acknowledged amount to the Operational Creditor.

4. The Operational Creditor has submitted that they are further entitled to receive interest on the unpaid tax invoice amount at the rate of 18% per annum from the date of defaults i.e. February 12, 2019 till realization of the debt. In support of its claim, the Operational Creditor has annexed all the tax invoices relating to the claim, a copy of the ledger account of the Corporate Debtor in the books of account of the Operational Creditor from 5<sup>th</sup> of August, 2017 till 11.02.2019 to indicate that no amount has been received from the Corporate Debtor after 11<sup>th</sup> February, 2019 and also to reflect that a sum of Rs.1,70,82,059.04 is the closing balance due from the Corporate Debtor to the Operational Creditor. A demand notice dated 27<sup>th</sup> June, 2019 was sent through speed post to the Corporate Debtor mentioning therein the brief facts relating to their transactions and demanding the total value of the products supplied by the Operational Creditor to the Corporate Debtor which was lying unpaid till then i.e. Rs.1,70,82,059.04 along with interest. The said notice was duly delivered and the Corporate Debtor replied to the said notice through its advocate.
  
5. The reply of the Corporate Debtor to the notice issued by the Operational Creditor mainly raised the issue that the supplies received from the Operational Creditor during the month of October 2017 and November 2017 were not as per the desired specifications and when the matter was brought to the notice of the Operational Creditor, the

Operational Creditor allegedly expressed their inability to take back such supplies as they would become completely redundant, useless and lose all its commercial value and be sold for scrap. It is stated in the reply that the Corporate Debtor was requested to consume and appropriate such rejected products and agreed to make adequate deduction in the invoiced value towards these rejected products. It is further stated in the reply that the Operational Creditor agreed to reduction of Rs.1,54,00,000/- (Rupees One Crore Fifty-Four Lakh Only), and that only a sum of Rs.57,491/- (Rupees Fifty Seven Thousand Four Hundred Ninety One only) is due and would be paid if the Operational Creditor was ready to receive the same. The Corporate Debtor denied all other averments of the notice and required the Operational Creditor to withdraw the notice.

6. The Operational Creditor once again sent rejoinder to the reply dated 19<sup>th</sup> September, 2019, received from the Corporate Debtor and stated that the reply is replete with false, malicious and baseless allegations. The Corporate Debtor was informed that no documents have been disclosed or produced with the reply dated 9<sup>th</sup> July, 2019 and that the Corporate Debtor had failed to deny the allegations of the operational debt due to the Operational Creditor. The statements and contents of the reply are merely an after- thought, which has been designed to evade the legitimate claims of the Operational Creditor in the demand notice. The Operational creditor denied the various allegations made in the reply and once again called upon the

Corporate Debtor to make the payment of the unpaid and outstanding operational debt in default, to the tune of Rs.1,70,82,059.04 together with interest @18% p.a. thereon from August 5, 2017.

7. Now the question that calls for consideration and taking a decision on by this Adjudicating Authority is as to whether any operational debt is due to the Operational Creditor from the Corporate Debtor or not? On the one hand the Operational Creditor has proved on record by way of various tax invoices, ledger account etc. that the full payment of the goods supplied to the Corporate Debtor has not been made to the Operational Creditor, whereas the Corporate Debtor for the first time in its reply to the notice under Section 8 of the IBC has denied the claim of the Operational Creditor on the ground that some debit note had been issued by the Corporate Debtor to the Operational Creditor after the Operational Creditor consented to the same in lieu of the defective supply to the Corporate Debtor which according to the Operational Creditor is false and an after-thought, being stated only to frustrate and evade the claim of the Operational Creditor.
8. We have gone through the application of the Operational Creditor, reply affidavit along with annexures filed by the Corporate Debtor and the rejoinder filed by the Operational Creditor and also sur-rejoinder filed by the Corporate Debtor.
9. In the reply affidavit the Corporate Debtor denied that the goods

were received from the Operational Creditor without any objection or demur with regard to quantity and quality of the goods. It is stated that the Corporate Debtor had raised its complaint with regard to quality of the goods and requested the Operational Creditor to take back such goods as the same could not be used for the specified work. It is stated that the Corporate Debtor had also raised a debit note under the cover of its letter dated 17<sup>th</sup> January, 2018 which was duly received by the Operational Creditor. The CD further stated to have also made payment of Rs.16,24,568/- as reflected in the bank statement enclosed to the affidavit. Credit for that amount has however not been given by the Operational Creditor. It is submitted that the disputes with regard to quality of goods was raised way back in 2017 and prior to issuance of the statutory notice can be considered as pre-existing dispute and the application cannot be entertained and should be dismissed.

10. The Operational Creditor, however, denied in the rejoinder that the calculation of the amount made by the Operational Creditor is incorrect as alleged or at all. It was denied that a sum of Rs.16,24,568/- was paid by the Corporate Debtor on 12<sup>th</sup> September, 2017 as alleged at all. It is submitted by the Operational Creditor that it has only one bank account i.e. with Karur Vyasa Bank and the Annexure B i.e. a statement issued by the Bank would show that no sum of Rs.16,24,568/- was deposited in the said account of the operation creditor. It is submitted that the Corporate Debtor has with

ulterior motive and mala fide intention alleged that the said sum has been paid to the Operational Creditor. In fact, the Operational Creditor has several group companies and those group companies also have transactions with the Corporate Debtor. One of the said group company is Aanchal Ispat Limited (now in CIRP) and the aforesaid cheque of Rs.16,24,568/- was issued by the Corporate Debtor in favour of Aanchal Ispat Limited as would be evident from the bank statement certified by Karur Vysya Bank, Burrabazar Branch. It is further submitted that the cheque number mentioned in Annexure 'A' of the reply affidavit by the Corporate Debtor is the same cheque number which was mentioned in the bank account of Aanchal Ispat limited (now in CIRP) in whose favour the said cheque was issued. The Corporate Debtor has made a false statement which according to the Operational Creditor, is liable for forgery.

11. The Operational Creditor denied that there was any quality testing of the goods supplied done or agreed to be done as alleged or there was any agreement for testing the product as alleged. According to the Operational Creditor the story of testing is an after-thought. The Operational Creditor has denied all the allegations made in the reply by the Corporate Debtor. The Operational Creditor has further denied and stated that the receipt of the letter dated 13<sup>th</sup> November, 2017 is forged and seal is not of the Operational Creditor and also the initial appearing on the said seal is not of any employee or person concerned of the Operational Creditor. The said letter dated 13<sup>th</sup> November,

2017 was never received by the Company and the receipt is not of the Operational Creditor. It is stated that at no point of time the Corporate Debtor complained about the goods or asked the Operational Creditor to take back the supplies. The Operational Creditor further denied that there was any suppression of facts by the Operational Creditor at all. It was further denied that there was any pre-existing dispute.

12. In the sur-rejoinder filed by the Corporate Debtor, we find that the cheque of Rs.16,24,568/- (Rupees Sixteen Lakh Twenty Four Thousand Five Hundred Sixty Eight Only) was issued to Aanchal Ispat Limited and that it was not received by the Operational Creditor. The Corporate Debtor has filed a Certificate dated 13<sup>th</sup> July, 2020 issued by the HDFC Bank certifying the issue of the said cheque by the Corporate Debtor and the same is marked with the letter 'A'.

13. While carefully going through the said certificate annexed with the sur-rejoinder filed by the Corporate Debtor it would be seen that the said cheque No. 014545 for Rs.16,24,568/- issued from Cash credit account no. 00140120000257 by Shyam Sel & Power Limited was stated to have been issued in favour of **Aanchal Iron and Steel Private Limited** and was cleared on 12.09.2017. It is also stated in that very certificate that the certificate was issued at the specific request of M/s. Shyam Sel & Power Limited without attaching any risk

and responsibility on Bank or any signing officer in any respect whatsoever, more particularly either as guarantor or otherwise.

14. Another letter annexed with the sur-rejoinder is issued by the Chartered Accountant M/s. S K Agrawal and Co to the Board of Directors of Shyam Sel and Power Limited i.e. the Corporate Debtor that “We, M/s. S K Agrawal and Company, statutory auditor of M/s. Shyam Metallics and Energy Limited, have been asked by the subsidiary company Shyam Sel and power Limited to certify the outstanding amount to Aanchal Iron & Steels Private Limited for the litigation in NCLT CP IB no. 1778/KB/2019 Aanchal Iron & Steel Pvt. Ltd. vs. Shyam SEL and Power Ltd. We hereby certify that as per information and explanation given to us and documents produced before us, certify that the aggregate trade payables of Rs.447.11 crores as per the audited Consolidated Financial Statements for the year ended 31<sup>st</sup> March, 2018 includes a sum of Rs.4.33 crores payable to Aanchal Iron & Steels Private Limited as at 31.03.2018.” According to the Operational Creditor, it is a clear-cut admission of its liability towards the Operational Creditor on the part of the CD.

15. We have heard the Ld. Counsel for the parties and we are satisfied that the operational creditor has been able to establish that there was outstanding Operational debt which has not been paid by the Corporate Debtor in spite of notice of demand having been served. From the reply documents etc., filed by the Corporate Debtor, no valid

or reliable proof or evidence was produced by the Corporate Debtor which could indicate that there was any pre-existing dispute. The Corporate Debtor has not been able to prove that the Operational Creditor had ever agreed to the issuance of any debit note by the Corporate Debtor which could have set off the amount due as being claimed by the Corporate Debtor on account of debit note or defective goods. In the absence of any such valid proof of the debit note having been created by the CD or accepted by the Operational Creditor, the amount of Rs.1,70,82,059.04 with agreed interest remained outstanding which the Corporate Debtor has failed to clear, and defaulted in spite of Demand Notice.

16. During the course of arguments, the Operational Creditor has taken us through the petition and all annexures, the rejoinder etc., and has proved that total supplies to the tune of Rs.7,68,13,254.04 were made to the Corporate Debtor against tax paid invoices from August, 2017 to November, 2017. It has further been proved by the Operational Creditor that a sum of Rs.5,97,31,195/- has been received from the Corporate Debtor but, for the remaining amount of Rs.1,70,82,059.04 the Corporate Debtor defaulted in making payment. The demand notice dated 27<sup>th</sup> June, 2019 under Section 8 of the IBC has admittedly been received by the Corporate Debtor and a reply thereto was also sent on July 9, 2019. The Operational Creditor further issued a reply on 19<sup>th</sup> September, 2019. The Operational Creditor has submitted that the Operational Creditor had paid GST in respect of the total

supplies and filed GST returns with respect to the same. The Corporate Debtor has also availed the tax benefit as input tax credit and there is no mismatch. No input tax credit was reversed by the Corporate Debtor. Ld. Counsel for the Operational Creditor further argued that the Corporate Debtor has admitted its liability as the holding Company of the Corporate Debtor viz., Shyam Metalics and Energy Limited has filed a consolidated Balance Sheet and annexed thereto is a consolidated list of Sundry Creditors as on 31<sup>st</sup> March, 2018, whereby the holding Company to the Corporate Debtor has admitted that Rs. 4.33 crore is payable to the Operational Creditor as on 31<sup>st</sup> March, 2018. The Ld. Counsel for the Corporate Debtor however submitted that part of the goods supplied by the Operational Creditor were defective.

17. It is however submitted by the CD that the Operational Creditor was informed about the defective goods and the Corporate Debtor raised its complaint with regard to the quality of the goods as the goods could not be used for the specified work. It is argued that the Corporate Debtor had already raised such complaint by virtue of its letter dated November 13, 2017 as the Corporate Debtor has also raised a debit note submitted under cover of its letter dated January 17, 2018. The Corporate Debtor has also submitted that a sum of Rs.16,24,568/- reflected in the bank statement was paid to the Operational Creditor for which credit has not been given by the Operational Creditor. In reply to the arguments of the Corporate

Debtor the Operational Creditor submitted that the Corporate Debtor has never raised any objection regarding the quality or quantity and that the letter dated 13<sup>th</sup> November, 2017 or January 17, 2018 or debit note dated 17<sup>th</sup> January, 2018 have never been received by the Operational Creditor. It is stated that the receipts on the said letter are forged and seal is not of the Operational Creditor nor are the initials appearing on the said stamps are of any employee or person concerned with the Operational Creditor.

18. It is stated that no goods have been returned by the Corporate Debtor and the allegations are false and incorrect. Since no complaint was ever made, as such the question of the Operational Creditor requesting the Corporate Debtor to consume the rejected product or agreeing to make deduction is untrue and incorrect. The Operational Creditor never agreed to any deduction of Rs.1,54,00,000/- (Rupees One crore Fifty Four Thousand Only) as alleged. The letter dated 13<sup>th</sup> November, 2017 or letter dated 17<sup>th</sup> January, 2018 or debit note dated 17<sup>th</sup> January, 2018 were never received by the Operational Creditor. The whole controversy revolves on two issues – (1) whether the parties had agreed to accept or issue any debit note (2) whether the amount of Rs.16,24,568/- (Rupees Sixteen Lakh Twenty Four Thousand Five Hundred Sixty Eight Only) was paid by the Corporate Debtor to the Operational Creditor, for the both the parties have different versions.

19. The Corporate Debtor has allegedly enclosed letter dated 13<sup>th</sup> November, 2017 addressed to the Operational Creditor which allegedly have been received by the Operational Creditor on 14.11.2017, the contents of the letter are as under:-

*“This is with reference to the supply of MS Scrap during the period from August 17, October 17 and November 2017. As per our telephonic conversation we had, please note that the goods supplied during the month of October’17 and November’17 did not match the specifications.*

*However, even after several intimation over phone, we are yet to receive any response from your side. Hence, we will be bound to send back the goods supplied during the month of October’17 and November’17 amounting to Rs.5,18,25,895/- to your factory as such goods does not match the quality specifications”.*

20. Another letter dated 17<sup>th</sup> January, 2018 was again addressed to the Operational Creditor, which is alleged to have been received by the Operational Creditor on 18<sup>th</sup> January, 2018. The Operational Creditor, however, has denied having received either of the two letters and has submitted that the seal and initials were forged. Though in the letter dated 13<sup>th</sup> November, 2017 the Corporate Debtor

had allegedly mentioned in para 1 “that the goods supplied during the month of October’17 & November’17 did not match the specifications”, it is however, not clear as to what type of specifications had been agreed to between the parties. It is also not clear whether part of the consignment was inferior or the whole consignment was inferior, no details have been mentioned in the said letter. In para 2 of the letter the Corporate Debtor has written that even after several intimations over phone they are yet to receive response from the Operational Creditor and hence they would be bound to send back the goods supplied during the month of October 2017 & November 2017 amounting to Rs.5,18,25,895/- (Rupees Five Crore Eighteen Lakh Twenty Five Thousand Eight Hundred Ninety Five Only) to the factory of the Operational Creditor as the goods did not match the quality and specifications. To support its points, another letter dated 17<sup>th</sup> January, 2017 has allegedly been written to the Operational Creditor i.e. after 2 months, the contents whereof are reproduced as under:-

*“This is with reference to our letter dated 13 November 2017 and subsequent meetings and discussion we had with your officials representatives. During the discussions held you had agreed that goods supplied by you during the month of October 2017 and November 2017 were not as per the desired specifications.*

*During discussion it was also expressed by you that return of these goods will be a huge losses for you as these goods may not*

*fetch desired market prices. Considering the relationship between us over the years, we agreed to utilize the rejected goods in the factory after suitable deduction.*

*We mutually agreed for a deduction of Rs.1,54,00,000/- from total supply value of Rs.5,18,25,895/- made during the month of October 17 and November 17.”*

21. It is written by the Corporate Debtor to the Operational Creditor that subsequent meetings and discussions had taken place between the Corporate Debtor and the Official representatives of the Operational Creditor and that it had been agreed that the goods supplied by the Operational Creditor were not as per the desired specifications. It is further written in the letter that during discussions it had been expressed by the Operational Creditor that the return of the goods would be a huge loss for the Operational Creditor as these goods might not fetch desired market price. Considering the relationship between the parties over the years the Corporate Debtor had agreed to utilize the rejected goods in the Factory after suitable deductions and that a deduction of Rs.1,54,00,000/- from total supplied value was mutually agreed. It is surprising that several subsequent meetings were allegedly held between the Corporate Debtor and the Official representatives of the Operational Creditor and it is stated to have been agreed too between the parties in those meetings and discussions but, no minutes of the meetings have been recorded or signed by the parties. If there had been any such

meetings between the parties, the first thing that could have been done by both the Companies through their official representatives who attended the meetings, would be to get a note or minutes recorded, duly signed by both the parties where such a huge amount of Rs.1.54 crores was to be waived off by one party in favour of the other party and a debit note of the said amount was to be accepted. The debit note could have been made and signed there and then. The question of issuing debit note by the Corporate Debtor and accepting debit note by the Operational Creditor is un-believable in the facts of the present case, and this A/A cannot turn a blind eye to these inactions on the part of the Corporate Debtor, which would have been the natural conduct of any prudent person much less than a qualified Company Secretary or Directors or other officers in authority or managing the day to day affairs of the Corporate debtor, and cannot blindly believe these two letters which are otherwise disputed by the operational creditor as forged ones, against all other circumstances which go in favour of the operational creditor.

22. The next question about payment of Rs. 16,24,568/- which was allegedly paid by the Corporate Debtor to the Operational Creditor on 12<sup>th</sup> September, 2017. The Operational Creditor however has denied and stated that the said amount was never deposited in its sole account and in fact the cheque had been issued by the Corporate Debtor to Aanchal Ispat Limited (now in CIRP) which is a group company of the Operational Creditor. Both these Companies are

separate corporate entities and their dealings cannot be allowed to be mixed up by the Corporate Debtor whatever relation between these two companies may be. Even though the reply to the notice was sent by the Corporate Debtor to the Operational Creditor on 9<sup>th</sup> July, 2019, there is no reference to the letter dated 17<sup>th</sup> January, 2018 allegedly written by the Corporate Debtor to the Operational Creditor which is the most important document according to the Corporate Debtor. The Corporate Debtor could not be so careless as not to mention the contents of the said letter in its reply to the notice received from the Operational Creditor.

23. Various judgments of the Hon'ble Supreme Court and those of Hon'ble Appellate Tribunal though gave importance to the existence of a dispute for rejecting an application under Section 9 but, has also held that the Adjudicating Authority has to see whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence, it is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application. But the facts in the present case are otherwise. The main points which weighed in our mind are that goods have not been returned and admittedly consumed by the Corporate Debtor. There are no minutes in spite of meetings having

taken place between the representatives of the Operational Creditor and the Corporate Debtor, the two letters dated 13<sup>th</sup> November, 2017 and 17<sup>th</sup> January, 2018 have been unilaterally drafted and allegedly sent to the Corporate Debtor later on with no specific receipt by any responsible officer of the Operational Creditor. What was the method of calculation adopted by the parties in reaching the amount of debit note is not clear. The Corporate Debtor has availed tax benefit as per input tax credit and no input tax credit was reversed by the Corporate Debtor.

If there had been any such agreement even though an oral one for issuance or acceptance of a debit note to the tune of Rs.1.54 crores, the Corporate Debtor would have immediately reversed the input tax credit. If there had been meetings or discussions for about two months there must have been some exchange of e-mails in the present age when people do not rely on telephonic conversation only. None of the e-mail record exchanged between the parties has been placed on record by the Corporate Debtor. In the absence of any such record or evidence in support, the CD has attempted to base its version only on telephonic discussions and the aforesaid two letters which are otherwise being disputed as forged ones.

We have also gone through the written notes with copies of the judgments relied upon by the parties.

29. In view of the aforesaid discussions, we see no truth in the story of issuing debit note by the Corporate Debtor or acceptance thereof

by the Operational Creditor. The version of the Operational Creditor that neither of the two letters were received by the Operational Creditor and the seal and initials also do not belong to the Operational Creditor in any manner appears to be probable one. With the aforesaid discussions, we are of the considered view that the Operational debt of Rs.1,70,82,059.04 is due and outstanding to be payable by the Corporate Debtor to the Operational Creditor. The Corporate Debtor has failed to clear its outstanding and defaulted in making the payment in spite of notice under Section 8 of the IBC. The sum of Rs.1,70,82,059.04 is payable along with interest to the Operational Creditor. We, therefore, have no hesitation in admitting the petition and ordering initiation of CIRP against the Corporate Debtor with the following orders: -

### **ORDERS**

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. Shyam Sel and Power Limited** is hereby **admitted**.
- ii) We hereby declare and order a moratorium, and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public

announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- v) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- vi) The services rendered to the corporate debtor as may be specified

shall not be terminated, suspended, or interrupted during the moratorium period.

- vii) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- viii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- ix) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- x) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- xi) **Mr. Seikh Abdul Salam, IBBI Regn. No.IBBI/IPA-003/IP-N00250/2019-2020/12966, Phone no.7318868526, and email id – [salam10695@gmail.com](mailto:salam10695@gmail.com)** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

- xii) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xiii) The Operational Creditor/Applicant is directed to deposit Rs.1,00,000/- (Rupees one lakh only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional within one week of the date of this order.
- xiv) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through email.
- xv) List the matter on 10.11.2020 for the filing of the progress report.
- xvi) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (T)**

**(M.B. Gosavi)**  
**Member (J)**

Order dated the 30<sup>th</sup> day of September 2020.

VC